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TEARS WITHOUT TOMBS: ENFORCED DISAPPEARANCE IN THE PHILIPPINES

Joint Submission of AFAD and FIND (with the support of Misereor)
Third Cycle of the UN Universal Periodic Review
May 2017

I. EXECUTIVE SUMMARY

1. The Philippines is a state party to eight out of nine core treaties. The exception is the International Convention for the Protection of All Persons from Enforced Disappearance (CPED). It has been twice re-elected to the UN Human Rights Council since 2006. It must be noted that the Philippines made a voluntary pledge¹ to take steps towards the signing and ratification of the CPED during its candidature to the UN Human Rights Council in 2007. And lastly, in 2012, after years of lobbying by civil society organizations led by Families of Victims of Involuntary Disappearance (FIND), the Philippine government enacted a domestic law that criminalizes enforced disappearance (Republic Act 10353).
2. Despite these developments, there is much to be desired with respect to ending and resolving enforced disappearances in the country. For instance, at present, there are 1,774 reported victims of enforced disappearance² since the first documented victim in 1971. Out of the cases submitted to the UN Working Group on Enforced or Involuntary Disappearance (UN WGEID), 625 remain unclarified³, this is the highest figure in Southeast Asia.
3. It has been 26 years since the UN WGEID last visited the Philippines in 1990. The Philippines has not replied to the UN WGEID's request to visit, which was first transmitted in 2006, nor to any of the UN WGEID's subsequent follow up requests.
4. Despite the promulgation of an Anti-Enforced Disappearance Law, the Philippines is not yet a state party nor a signatory to the CPED, the only remaining core treaty that the Philippines has not ratified. As a state under review, the Philippines has consistently stated that it would study the said Convention in its reports during the First⁴ and Second⁵ cycles of the Universal Periodic Review. As previously mentioned, the Philippines has made a voluntary pledge to strengthen domestic support for the signing and ratification of the Convention during its candidature to the UN Human Rights Council in 2007. However, almost 10 years after, there has been no progress toward the signing and ratification of the Convention.

¹ Note verbale dated 18 April 2007 from the Permanent Mission of the Philippines to the United Nations addressed to the President of the General Assembly, A/61/882, (26 April 2007)

² Research and Documentation Program of Families of Victims of Involuntary Disappearance (25 August 2016)

³ Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/30/38 (10 August 2015)

⁴ Report of the Working Group on the Universal Periodic Review, A/HRC/8/28/Add.1 (25 August 2008)

⁵ Report of the Working Group on the Universal Periodic Review, A/HRC/21/12/Add.1 (19 September 2012)

II. SUMMARY OF RECOMMENDATIONS

5. Given the current situation (as will be further detailed in this stakeholder report), AFAD and FIND jointly make the following recommendations to the Philippine government:

Recommendation 1: Implement recommendations of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution that relate to Enforced Disappearance.

Recommendation 2: Ensure that Enforced Disappearance is included in the agenda of the peace process between the Government of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP).

Recommendation 3: Implement the Anti-Enforced Disappearance Law (Republic Act 10353) fully and strictly without delay.

Recommendation 4: Sign and ratify or accede to the International Convention for the Protection of all Persons from Enforced Disappearance (CPED).

Recommendation 5: Take concrete steps to clarify and resolve the 625 outstanding cases submitted to the UN WGEID.

Recommendation 6: Accept the request of the UN WGEID to visit the Philippines as soon as possible.

III. METHODOLOGY

6. This joint submission was drafted by the **Asian Federation Against Involuntary Disappearances** (AFAD) which proposed a draft outline for comments from one of its member organizations in the Philippines, the **Families of Victims of Involuntary Disappearance** (FIND). After the outline was agreed upon, FIND provided primary data based on its research and documentation program. In addition to the primary data of FIND, secondary data were gathered mostly from UN documents as well as media reports. Finally, the draft was reviewed by consultants who have expertise in the UPR process before being submitted to the UN OHCHR.

IV. STAKEHOLDER PROFILES

7. **AFAD** is a federation of human rights organizations in Asia composed of human rights defenders and families of victims of enforced disappearance. It has fourteen member organizations located in ten countries as well as individual members. AFAD actively and consistently participated in all sessions of the then Inter-Sessional Working Group to Draft a Legally Binding Normative Instrument for the Protection of All Persons from Enforced Disappearance which was negotiating and drafting the International Convention for the Protection of All Persons from Enforced Disappearance from 2002-2005 in Geneva, Switzerland. It continues to campaign and lobby for the ratification of the Convention by Asian states. AFAD is currently the focal point of the International Coalition Against Enforced Disappearance (ICAED) and the secretariat of the Coalition Against Enforced Disappearance (CAED) in the Philippines.
8. **FIND** is a nationwide human rights organization of families, relatives, friends and colleagues of disappeared victims in the Philippines. It spearheaded the 16-year lobby for the enactment of the Anti-Enforced Disappearance Law and actively participated in

the joint government-NGO drafting and promulgation of the implementing rules and regulations of the Anti-Enforced Disappearance Law in the Philippines. FIND has been in Consultative Status with the United Nations Economic and Social Council since 2002. FIND participated in the drafting and negotiation process of the CPED in September 2005. In June of the following year, FIND delivered oral interventions at the first session of the UN Human Rights Council where the full text of the Convention was adopted as the Council's first resolution.

V. FOLLOW UP TO THE PREVIOUS REVIEW

9. During the 2nd Cycle of the UPR, the Philippines accepted⁶ all recommendations related to *tackling, investigating, ending impunity, taking steps, taking necessary/urgent measures*, and other broad actions towards ending enforced disappearance.
10. In contrast, during the same cycle, the Philippines only noted⁷ all recommendations related to the following concrete actions:
 - a. *Sign and ratify OR accede* to the CPED
 - b. *Promulgate* a law which defines and sanctions Enforced Disappearance
 - c. *Accept* the request of the UN WGEID to visit the country
11. A law which defines and sanctions Enforced Disappearance was enacted in 2012 (Republic Act 10353). ***The stakeholders commend this accomplishment.*** However, as discussed in further detail below, the said law has not been effectively implemented.
12. Despite the acceptance of the aforementioned recommendations, there has been no substantive improvement in the situation of the Philippines in relation to enforced disappearance (please see next section).

VI. CURRENT SITUATION

13. Despite the enactment of a law criminalizing Enforced Disappearance and the acceptance of recommendations related to the elimination of Enforced Disappearance, the Philippines continues to suffer from this grave human rights violation. According to the data of FIND, there are a total of 1,774 documented victims of enforced disappearance. This figure is broken down into the following:
 - a. Still Missing: 1,056
 - b. Surfaced Alive: 488
 - c. Found Dead: 230
14. The families of the disappeared continue to equivocate between hope of reuniting with their disappeared loved ones alive and despair that they might have already been tortured to death. They suffer not only from traumatic loss but also from economic dislocation especially those whose disappeared kin were the sole family breadwinners. As a result of their worsened economic situation, other rights are affected, such as the right to education of their children and the right to health of the family members left behind. Hence the need for adequate and effective psychosocial support and rehabilitation that include livelihood assistance especially during drawn out legal actions or exhumations.

⁶ Report of the Working Group on the Universal Periodic Review, A/HRC/21/12/Add.1 (19 September 2012)

⁷ Ibid.

15. In addition to Enforced Disappearances, President Rodrigo Duterte's program to curb drug-related crimes has resulted in the death of more than 1,000⁸ suspects in his first three months in office. Many of these victims were denied due process. This program is reminiscent of the methods of the Davao Death Squads⁹ that operated in Davao City where the President served as Mayor for many years. These Death Squads were cited in the report¹⁰ of the Special Rapporteur on extrajudicial, summary or arbitrary executions.
16. Based on the aforementioned report of the Special Rapporteur, as well as the case documentation of the stakeholders, there is a very strong link between the methodologies employed in extrajudicial executions and the conduct of enforced disappearances. Enforced disappearance is commonly the first step in the process that leads to the extrajudicial execution of victims taken to secret detention sites.
17. As a response to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions after his visit in 2007, the Philippines promulgated Administrative Order 35 (A035) which created the inter-agency committee on extra-legal killings, enforced disappearances, torture, and other grave violations of the right to life, liberty and security of persons. Part of the function of this committee is the investigation and prosecution of new cases. However, up to the writing of this report, no case of enforced disappearance has been prosecuted. The PICOP6 case, the only case filed under the domestic law (to be discussed in the following sections), was immediately dismissed without even conducting a preliminary investigation.
18. As such, the stakeholders recommend that the aforementioned report be reviewed and the recommendations contained therein be implemented. Thus, the stakeholders make the following recommendation:

Recommendation 1: Implement recommendations of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution that relate to Enforced Disappearance.

In particular, (1) release a report on the progress of implementation of the recommendations of the SR during his 2007 visit, (2) implement the recommendations of the SR during the said visit, particularly those relating to the counter-insurgency program, the witness protection program, and Congressional oversight in relation to the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP), and (3) conduct an assessment of the implementation of A035.

19. On the other hand, President Duterte has released 14 political detainees¹¹ and has initiated the resumption of the peace process between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP) in accordance to the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL). The CARHRIHL includes the following reference to the prevention of enforced disappearance:

⁸ "The Death Toll of the War on Drugs," ABS-CBN News, <http://news.abs-cbn.com/specials/map-charts-the-death-toll-of-the-war-on-drugs> (13 July 2016)

⁹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/8/3/Add.2 (16 April 2008)

¹⁰ Ibid.

¹¹ "Reds 'celebrate' release of political prisoners," CNN Philippines, <http://cnnphilippines.com/news/2016/08/18/GRP-NPA-NDF-GPH-peace-talks-political-prisoners.html> (18 August 2016)

“Article 2

This Agreement seeks to confront, remedy and prevent the most serious human rights violations in terms of civil and political rights, as well as to uphold, protect and promote the full scope of human rights and fundamental freedoms, including:

...

*4. The right to life, especially against summary executions (salvagings), **involuntary disappearances**, massacres and indiscriminate bombardments of communities, and the right not to be subjected to campaigns of incitement to violence against one's person.” (emphasis supplied)*

20. Based on the case profiles analysis of the stakeholders, the majority of the cases of enforced disappearance are politically motivated, ergo, the resumption of the peace process and eventual implementation of the CARHRIHL’s provisions related to enforced disappearance will surely contribute to the prevention of future cases of enforced disappearance. Thus, the stakeholders make the following recommendation:

Recommendation 2: Ensure that Enforced Disappearance is included in the agenda of the **peace process** between the Government of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP).

VII. DOMESTIC LAW (RA10353)

21. During the 2nd Cycle of the UPR, the Philippines noted Canada’s recommendation¹² to “promulgate draft law 2817...which defines and sanctions Enforced Disappearance.” In 2012, the Anti-Enforced Disappearance Law (RA10353) was enacted. **The stakeholders commend the Philippine government on this milestone.**

22. However, there have been gaps in the implementation and interpretation of the said law. FIND filed a test case of six paper mill workers, called **PICOP 6**, under this law. The national prosecutor’s office immediately dismissed the case citing the fact that the six workers disappeared in the year 2000 and thus, their case is not covered by this law. The Families, thru the Free Legal Assistance Group (FLAG), filed a Petition for Review with the Office of the Secretary of the Department of Justice. The Secretary of Justice upheld the findings of the Prosecutor holding that;

“... no such manifest error that would justify the reversal of the assailed joint resolution, which is in accord with the evidence adduced and the law on the matter. We agree with the findings of the investigating prosecutor that respondents-appellees cannot be prosecuted under R.A. No. 10353 for that would violate the constitutional prohibition against ex post facto laws. It is well-settled in this jurisdiction that penal laws cannot be given retroactive effect, except when they are favorable to the accused.”

23. As a result of the Department of Justice’s refusal to recognize the continuing nature of the crime of enforced disappearance, relatives of those who disappeared before 2012, the year that the law was enacted, are unable to claim financial assistance.

24. In order for the Anti-Enforced Disappearance Law to be beneficial to the victims, the stakeholders make the following recommendation:

¹² Report of the Working Group on the Universal Periodic Review, A/HRC/21/12/Add.1 (19 September 2012)

Recommendation 3: Implement the Anti-Enforced Disappearance Law (**Republic Act 10353**) fully and strictly without delay.

In particular, (1) recognize the continuing nature of Enforced Disappearances so that provisions related to this may still apply to cases committed prior to the enactment of the law AND cases filed under this law can be prosecuted (2) expedite the restitution, compensation, and rehabilitation of victims, and (3) conduct an assessment on the effectiveness of the law and its implementing rules and regulations.

VIII. INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE (CPED)

25. The Philippines is currently neither a state party nor a signatory to the CPED. During the 2nd Cycle of the UPR, eight countries¹³ (Argentina, Belgium, Brazil, Japan, France, Chile, Spain, and Iraq) made recommendations to the Philippines to sign and ratify or to accede to this Convention. In contrast, during the 1st Cycle, two countries¹⁴ (Slovenia and Mexico) made the same recommendation regarding the Convention. The Philippines did not accept these recommendations during both cycles. This is a departure from its official statement during its candidature to the UN Human Rights Council in 2007 where it made a voluntary pledge to ***“strengthen domestic support for the signing and ratification of the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance”***¹⁵.
26. The stakeholders have been lobbying the Philippine government to sign and ratify the Convention, but have received inconsistent responses. Prior to the enactment of the Anti-Enforced Disappearance Law, President Benigno Aquino III in a meeting with the stakeholders committed to study the matter of signing even as then Foreign Affairs Secretary underscored the enactment of the Anti-Enforced Disappearance Law prior to signing of the CPED. In 2012, Aquino signed the law but the CPED has neither been signed much less ratified by the Philippines.
27. The Department of Foreign Affairs had expressed concern regarding two Articles in the CPED, namely:
 - a. that Article 9 *“allows the principles of territoriality and/or nationality as the basis for the assumption of jurisdiction.”*
 - b. that Article 13 *“stipulates that the offense of enforced or involuntary disappearance is deemed to be included as an extraditable offense in any extradition treaty between States even before the entry into force of the Convention.”*
28. In response to the above concerns, the Coalition Against Enforced Disappearance of the Philippines (CAED) sent a formal communication (dated 14 April 2015) to the former President Benigno Aquino III mentioning the following explanations:

¹³ Ibid.

¹⁴ Report of the Working Group on the Universal Periodic Review, A/HRC/8/28/Add.1 (25 August 2008)

¹⁵ Note verbal dated 18 April 2007 from the Permanent Mission of the Philippines to the United Nations addressed to the President of the General Assembly, A/61/882, (26 April 2007)

- a. Article 9 of the CPED reproduces almost literally Article 5 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Philippines is a State party to the CAT since 18 June 1986. If Article 5 of the CAT was not an obstacle to ratification, it should not be an obstacle as regards the CPED.
 - b. Article 13 of the CPED reproduces almost literally Article 8 of the CAT. Similarly, if this was not a problem when ratifying the CAT, it should not be a problem when signing or ratifying the CPED. This raises the question, *How has the Philippines faced the practical problems, if any, related to considering torture an extraditable offence to be added to treaties concluded prior to 1986?*
 - c. Furthermore, Article 9 of the CPED has its equivalent in Article 4 of the Optional Protocol to the Convention on the Rights of the Child on Sale of Children, Child Prostitution and Child Pornography (which the Philippines ratified on 28 May 2002). Therefore, it is not clear why there should be an obstacle which has never existed before.
29. With the negative pronouncements¹⁶ of President Rodrigo Duterte against the United Nations before and after he took office, the stakeholders and their supportive allies made last minute efforts to lobby former President Benigno Aquino III to, at the least, sign the Convention. The following sent official communications to the Office of the President:
- a. AFAD and FIND (The Stakeholders)
 - b. The Coalition Against Enforced Disappearance of the Philippines (CAED)
 - c. The International Coalition Against Enforced Disappearance (ICAED)
 - d. The Commission on Human Rights of the Philippines (CHRP)
 - e. Hon. Edcel Lagman, principal author of the Anti-Enforced Disappearance Law
30. Despite the many attempts to reach the office of the former president, the stakeholders and their allies did not receive a response. Given this situation, the stakeholders make the following recommendation:

Recommendation 4: Sign and ratify or accede to the International Convention for the Protection of all Persons from Enforced Disappearance (**CPED**).

In particular, create a plan of action detailing what kind of study, assistance, or orientation the Philippine government requires that would eventually lead to the signature and ratification of, or accession to the CPED.

IX. THE UN WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCE (UN WGEID)

31. The Philippines currently has **625 outstanding cases** submitted to the UN WGEID. The most notable of these cases being:
- a. **Daryl Fortuna and Jinky Garcia** (Disappeared March 9, 2010), submitted by FIND
 - b. **Najir Ahung, Rasdie Kasaran, and Yusup Mohammad** (Disappeared January 3, 2012), submitted by FIND

¹⁶ "Philippine President-elect Duterte curses UN," Rappler News, <http://www.rappler.com/nation/135179-philippines-president-duterte-curses-united-nations> (03 June 2016)

c. **Jonas Burgos** (Disappeared April 28, 2007), submitted by Free Jonas Burgos Movement

32. Of the 625 outstanding cases, 600+ were submitted by FIND while other cases were submitted by KARAPATAN. The case of Jonas Burgos was submitted by the Free Jonas Burgos Movement (FJBM) which is another AFAD member organization based in the Philippines.
33. All the enumerated cases above have been transmitted by the UN WGEID to the Philippine government but the UN WGEID has not yet received a response. The stakeholders have brought this absence of response to the attention of the Permanent Mission of the Philippines to the UN in Geneva, both in writing and through a face to face meeting in March 2016. Thus, the stakeholders make the following recommendation:

Recommendation 5: Take concrete steps to clarify and resolve the **625 outstanding cases** submitted to the UN WGEID.

In particular (1) immediately send a response to the UN WGEID regarding the cases transmitted to the Philippine government (2) direct the agencies involved in the **Jonas Burgos** case to comply with the Supreme Court decision (3) conduct an investigation on the cases of **Daryl Fortuna, Jinky Garcia, Najir Ahung, Rasdie Kasaran, and Yusup Mohammad**, (4) provide protection to the witnesses in the said cases, and (5) provide support to families of the victims whether financial or through any means possible.

34. The UN WGEID last visited the Philippines in 1990. Since then, the UN WGEID has not been able to conduct another visit. It requested the Philippines to extend an invitation in 2006 but has neither received a response to the said request, nor to any of its subsequent follow up requests.
35. During the 1990 visit, the UN WGEID made several recommendations to the Philippines (see Annex 5). Some of the recommendations have been fulfilled either through domestic legislation related to Civil and Political Rights or ratification of human rights instruments. These developments are indeed commendable, but as with RA10353, legislation is only as good as its implementation. Furthermore, some recommendations may need to be revisited due to the changing political landscape through the years between 1990 and the present.
36. The stakeholders believe that collaborating with the UN WGEID through a country visit will not only be beneficial to families of victims, but it will also be beneficial for the Philippine government as the UN WGEID can make informed, updated, and relevant recommendations to address Enforced Disappearance in the country. Thus, the stakeholders make the following recommendation:

Recommendation 6: Accept the request of the **UN WGEID to visit** the Philippines as soon as possible.

In particular, (1) release a report on the progress of implementation of the UN WGEID's recommendations during its 1990 visit and (2) implement those that have been suspended or overlooked.

X. REVIEW OF RECOMMENDATIONS

37. To recapitulate, the stakeholders, composed of AFAD and FIND, make the following recommendations to the Philippine government during the 3rd Cycle of the Universal Periodic Review in May 2017:

Recommendation 1: Implement recommendations of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution that relate to Enforced Disappearance.

Recommendation 2: Ensure that Enforced Disappearance is included in the agenda of the peace process between the Government of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP).

Recommendation 3: Implement the Anti-Enforced Disappearance Law (Republic Act 10353) fully and strictly without delay.

Recommendation 4: Sign and ratify or accede to the International Convention for the Protection of all Persons from Enforced Disappearance (CPED).

Recommendation 5: Take concrete steps to clarify and resolve the 625 outstanding cases submitted to the UN WGEID.

Recommendation 6: Accept the request of the UN WGEID to visit the Philippines as soon as possible.